

APACHE ORO COMPANY

IBLA 74-249 Decided August 5, 1974

Appeal from a decision of the Arizona State Office, Bureau of Land Management, rejecting mineral lease applications A 7645 and A 7646 for lands within the Lake Mead Recreation Area.

Affirmed.

Act of October 8, 1964—Public Lands: Leases and Permits

The leasing of lands for mineral exploration and development within the Lake Mead Recreation Area is discretionary, and where an applicant for a mineral lease has not shown to the satisfaction of the authorized officer that the lands applied for are likely to contain deposits of the specified mineral which can be developed in paying quantities, the rejection of the offer will be affirmed.

APPEARANCES: Warren M. Mallory, President, Apache Oro Company, for the appellant. John McMunn, Esq., Office of the Solicitor, Department of the Interior, San Francisco, California.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Apache Oro Company has appealed from the decision of the Arizona State Office which rejected two of appellant's applications for mineral leases covering lands in the Lake Mead Recreation Area.

Mineral leasing in this area is authorized by the Act of October 8, 1964, 16 U.S.C. § 460m-2 (1970), and the regulations in 43 CFR Subpart 3566. The statute provides that " * * * the Secretary may provide for the following activities * * *: (3) Mineral leasing". 16 U.S.C. § 460m-3(b). This language vests

clear discretion in the Secretary (or an officer duly delegated to exercise his authority in this regard) to lease or to refrain from leasing.

43 CFR 3566.3-1 provides, in pertinent part, the following:

An applicant must * * * state the kind of mineral for which a lease is desired. The applicant must also give the reasons why he believes the mineral sought to be leased can be developed in the land in paying quantities and furnish such facts as are available to him respecting the known occurrence of the mineral in the land, the character of such occurrence and its probable worth as evidencing the existence of a workable deposit of such mineral. * * *

In its applications, Apache Oro merely stated that it sought to lease "All 'heavy' minerals, including copper, gold, iron, lead, mercury, molybdenum, nickel, silver, tin, rare earths and others," adding that, "Applicant believes that the minerals sought to be leased can be developed in paying quantities and is in consultation with the U.S. Geological Survey."

The Bureau of Land Management referred these applications to the Superintendent of the Lake Mead Recreation Area, an official of the National Park Service, for his recommendations concerning issuance of the leases. The response, by the Assistant Superintendent, Lake Mead, stated that a field review of the subject lease applications had been made with National Park Service representatives of Lake Mead, the Western Regional Office of Mining and Minerals and a representative of Apache Oro Company, and the Assistant Superintendent recommended that the subject leases not be granted "* * *" because it is our opinion there is an absence of sufficient mineral potential to support justification for a mineral lease."

On the basis of this report the lease applications were rejected.

In its statement of reasons for appeal the appellant criticizes the manner in which field examination was conducted by the Park Service personnel and challenges their ability to reach the conclusion that the mineral potential is insufficient to support justification of mineral leases. Appellant questions both the factual data available to these NPS personnel and their professional qualifications. Appellant restates the opinion

that there is sufficient mineral potential to justify leasing and offers to supply data upon the request of this Board.

Department Counsel has responded by filing an affidavit by Charles T. Weiler, a mining engineer employed by the National Park Service, who participated in the review of these lease applications and the field examination of the area where the lands are situated. Weiler states that he and another employee visited one of the areas sought and took a sample which assayed only 0.04 oz. of gold per ton. He also states that he examined all of the data made available by appellant's representative. Weiler also avers that the subject lease applications cover the identical lands formerly leased by appellant from 1967 to 1972, and for which no renewal application was filed. Weiler further states that appellant's representative informed him that during the terms of its previous leases, Apache Oro had never drilled, trenched, or conducted any systematic sampling program, nor done any detailed geologic mapping, nor performed any work on any of their leases within the recreation area except for assaying random grab samples. Weiler's affidavit further states that the research by the Geological Survey, to which appellant refers, "is a scientific inquiry into the character and mechanics of gold deposition, and is not directly translatable into estimates of value or degrees of certainty of the occurrence of gold * * *."

The regulation, supra, makes it quite clear that it is the responsibility of the applicant to support his application with facts and reasons which demonstrate his belief that the mineral sought can be developed in the land in paying quantities. Appellant, having failed to make such a showing, now attempts to shift to this Department the burden of proving the negative, i.e., that the mineral potential is not adequate to support the applications. We cannot permit appellant to so transfer to the Government its obligation to present evidence of the mineral character of the land it desires to lease. See Tibor W. Fejer, 11 IBLA 166, 167 (1973).

It is apparent that the National Park Service employees gave full consideration to the showing made by the appellant, and weighed this evidence against their own findings. Their conclusion, therefore, represented a reasoned analysis made in the discharge of their official duty and we find no basis to disturb that conclusion.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

